

Master Service Agreement

This Master Service Agreement is hereby entered into this ___ day of _____, _____, by and between _____ (hereinafter "Customer"), and One Point Technologies, Inc., a division of Blue Valley Tele-Communications, Inc., d/b/a Networks Plus ("NP")

The Customer has elected to engage NP and NP has agreed to provide certain services to Customer at prices set forth in the addendums, based on and in accordance with the terms and conditions of this Agreement.

In consideration of the mutual promises, conditions and agreements provided for in this Agreement, the sufficiency of which is acknowledged, Customer and Networks agree as follows:

- 1) **Agreement.** Customer engages NP to perform work, the scope of which is provided in the applicable Addendums, Service, and Purchase Agreements. Customer and NP agree the terms and conditions set forth in this Agreement shall control and govern the Work. In the event of a conflict between the provisions of this Agreement and the provisions of any associated Addendum, Service Agreement or Purchase Agreement, the provisions of this Agreement shall control.
- 2) **IT Technical and Consulting Services.** "Technical and Consulting Services" shall include those services that support the functionality of the Customer's existing network, computers, software or related peripherals. More specifically, technical and consulting services shall be identified as follows and charged at the rates set forth in the applicable quotation or proposal. Other services (i.e. training, and upgrades, etc.) may be negotiated on an individual basis.
 - a) **Technical Consulting.** Services that related to installation, maintenance, patching, troubleshooting, repair, or upgrade of:
 - i) PCs, laptop computers, tablet PCs, as well as operating systems and standard applications.
 - ii) Servers, as well as operating systems and standard server-based applications.
 - iii) Virtual machine hosts and environments, as well as operating systems and standard applications.
 - iv) Networking and connectivity components, such as hub, switches, transceivers, routers, firewalls, or wireless access points.
 - v) Backup hardware and software as sold and supported by NP.
 - vi) Cloud-based applications as sold and supported by NP.
 - vii) Commercially reasonable efforts will be made to support custom, specialty, or line-of-business applications, or solutions not sold or supported by NP, if the customer provides documentation or third-party support information for such applications
 - b) **Senior Level Consulting Services.** Project-based services that are related to the planning, design, installation, and project management of complex systems. Examples include, but are not limited to, routed or multi-network environments; high availability virtual hosting or environments; Cloud Services as sold and supported by NP; Disaster recovery/Business continuity solutions; advanced security solutions; network diagramming and documentation.
 - c) Other services, such as training, assistance with budget planning, or acting as a technical liaison with third parties, may be available upon Customer's request. Rates for such services will be mutually agreed upon based on the scope of the project and level of technical expertise required.
- 3) **IT Technical and Consulting Service Billing Terms.** Except as otherwise provided in Addendums, Service and/or Purchase Agreements, or equivalent statements of work with respect to Use Of Service clauses, the parties agree that the following terms will apply to the technical services provided by NP:
 - a) Technical Consulting may be performed remotely or on the Customer's site. Travel time may be assessed for onsite work.

- b) Emergency Services rendered after NP business hours (8 a.m. to 5 p.m., Monday through Friday, excluding holidays): double the hourly service rate with a one-hour minimum charge.
 - c) Scheduled Services after NP business hours: 1.5 times the corresponding hourly service rate with a one-hour minimum charge.
 - d) Topeka, Manhattan, Salina and Home, KS are recognized as the home base towns for NP technicians. Travel time will be recorded upon departure from the closest NP home base. If the customer requests a specific technician, full travel time from the technician's location will be assessed. Customer will reimburse NP for any reasonable expenses related to overnight travel, including but not limited to lodging, meals, etc.
 - e) Service time shall be invoiced in fifteen-minute increments, rounded to the nearest quarter hour. Service time will begin when a technician departs from nearest home base.
 - f) Should Technical Consulting Services be performed using remote connectivity, Service time will begin when the technician is connected to the machine on which service is being requested.
- 4) **IT Technical and Consulting Service Standard of Care and Compliance.** NP shall exercise the same degree of care, skill, and diligence in the performance of all services to Customer that is ordinarily possessed and exercised by reasonable, prudent, and experienced professionals in similar circumstances.
- a) NP will perform the Service to conform with best practices, according to generally-accepted industry standards, including, but not limited to, password complexity, remote access methods, and general security principles. Should the customer request changes which fall outside of the recommendations made by NP, the Customer assumes all liability for any risks such changes might entail, as well as any incidents which are attributable to the requested changes.
 - b) NP shall comply with all applicable federal, state and local laws, orders, rules and regulations relating to the performance of all services.
- 5) **Provisions of Service.** NP will provide those Services selected by Customer as set forth in the attached Addendums, Service, or Purchase Agreement. Services will be subject to specific terms and conditions set forth in this Agreement and the applicable Addendums, Service and/or Purchase Agreements.
- 6) **Billing and Fees.** The Customer shall pay NP those fees itemized on the Addendums or Service Agreements at the rate set forth on the applicable quotation or proposal, as well as those fees and payments required by any Purchase Agreement. In addition to any such fees and payments, Customer is responsible for paying, or reimbursing, NP for all excise, sales, use, or other taxes and regulatory fees that may be imposed directly by, or to recover costs relating to regulatory requirements imposed by, any governmental body, agency, or designee. Customer shall also pay NP for any supplemental charges applicable to the Services, such as charges for incremental usage, design changes, service relocation, maintenance, and expedites requested by Customer. It is understood that changes to these rates and supplemental charges may be made from time to time to reflect changes in NPs costs. NP shall notify Customer of any changes in its rates or charges and Customer shall have the right to cancel the affected Service(s), without penalty, by sending notification in writing on Customer's letterhead, from an authorized representative of Customer within thirty (30) days after receiving notification of adjustment from NP. Such cancellation will in no event be effective any earlier than thirty (30) days after receipt of the Customer's termination notification by NP or at the end of the term of the agreement should work continue at the original rate. Notwithstanding the foregoing, any failure by Customer to provide written notification of cancellation within the time periods set forth above in response to any increase in rates or charges shall be deemed acceptance of the changed terms by the Customer.
- 7) **Payments.** Customer shall pay all fees for any Service, real goods, or labor as stated on a monthly invoice from NP within ten (10) days of the date of such invoice ("Due Date").
- 8) **Late Fees and Collection Costs.** In the event Customer fails to make full payment by the Due Date, Customer also shall pay a late fee in the amount of the lesser of either three percent (3%) of the current charges per month or the maximum lawful rate under applicable state law. Late fees shall accrue from the Due Date. Customer shall pay any amounts incurred by NP in the collection of past due amounts owed including, but not limited to, reasonable attorneys' fees and costs. All returned checks will be subject to a \$25.00 processing fee or the maximum amount allowed by law.

- 9) **Service Suspension for Non-payment.** In the event Customer fails to make full payment by the Due Date, NP will notify the customer in writing. If payment is not received within fifteen (15) days of said notification, NP may suspend any or all of the Service provided to Customer with no additional notice provided to Customer. Such suspension may be rescinded by NP upon full payment of Customer's account, including any late fees, plus payment of a service reconnection charge.
- 10) **Billing Disputes.** Customer may withhold payment of fees related to the Service(s) being provided by NP hereunder that Customer disputes in good faith but only if Customer provides timely written notice to NP, on Customer's letterhead, from an authorized representative of Customer, prior to the due date on the applicable invoice that is in dispute in whole or in part. Failure of Customer to provide notice of a *bona fide* dispute in a timely manner, and specifically noting the amount in dispute and the basis for the dispute shall require Customer to pay the full amount of the invoice when due and request a refund from NP of the disputed amount. Failure of the Customer to pay the full invoiced amount where a notice of dispute has not been timely received by NP may subject Customer to late fees, reconnection charges, and service suspension, at NP's discretion and such charges and fees may not be refundable in the event that customer's dispute is ultimately resolved in Customer's favor in whole or in part. Customer shall not have the right to dispute any invoice or seek any refund for charges or fees after six (6) months from the due date of the invoice in question. In cases where Customer has timely notified NP of a charge or invoice that is the subject of a good faith dispute and is withholding monies on account of such a dispute, NP shall, in good faith, not impose any additional charges, such as late fees or penalties on Customer's account by reason of the unpaid disputed amount, or withhold or suspend Service otherwise due to Customer hereunder. Customer will not withhold payments for any portion of any invoice or charges that are not in dispute and the provisions and penalties of this Section shall continue to apply to any amounts which are not in dispute, regardless of whether such charges or amounts appear on the same invoice as other charges which are disputed. In the case where this Agreement includes the delivery of Service to multiple locations and Service delivery is delayed due to circumstances beyond the control of NP as determined by NP in its sole, reasonable discretion, Customer shall pay such partial fees for those portions of the Service which are not so delayed.
- 11) **Authorized Use.** Any use of NP's Services or systems that is in violation of NP's Authorized Use Policies, (as set forth at www.networksplus.com/legal and as such policies may be amended from time to time) or that disrupts the normal use of the NP's system for other NP customers, shall not be permitted. NP may monitor Customer use of service(s) as necessary to comply with applicable laws, regulations, or judicial requests, or to protect the NP network and its Customers. NP reserves the right to remove and/or block all communications if it suspects a violation of NP policies, terms, or conditions or if, in NP's sole discretion, it deems such action necessary to protect the system, NP, or its affiliates, directors, officers, agents, employees, or other Customers, from harm.
- a) Notwithstanding anything herein which may indicate or require otherwise, including without limitation any requirements that NP provide certain notices to Customer, **Customer's use of any Service provided by NP is an absolute acknowledgement by Customer that Customer has received delivery of such Service.**
- 12) **Start of Service.** NP shall make reasonable efforts to provide Services within its standard of service installation interval. It is understood that failure of NP to deliver Service by such date shall not require NP to issue service credits or pay Customer any penalties or monetary damages. If Customer requests to either delay or otherwise replace its confirmed start date, additional charges and fees may apply at NP's discretion. Additional charges may also apply if Customer cancels an installation appointment without proper notice or otherwise fails to make proper arrangements for its installation, which results in NP having to reschedule to complete installation.
- a) NP will notify the Customer within 48 hours from the time that NP has completed testing and the Service is available for use. Upon notification, the Customer will be billed applicable usage charges, regardless of when Customer actually begins using the Service. The Customer must give written notice to NP that the Service is in material non-compliance with the applicable Service Agreement within two (2) business days after service is available for use; otherwise, the Customer shall be deemed to have accepted such Service.
- b) NP shall test the Services to verify that they meet the applicable specifications and service level commitments set forth in the applicable Addendum or Service Agreement before the Service is made available to the Customer. Unless otherwise stated in this Agreement or in any Service Agreement, this shall be the extent of the testing performed by NP. Customer has sole responsibility for installation, testing, and operation of any applicable software acquired from NP for installation on Customer's own equipment,

broadband access acquired from third parties, and all Customer facilities, services, and equipment. Customer is also responsible for ensuring that the Services are compatible with its existing systems and devices. NP shall only be responsible for the installation of the Services as agreed upon in Addendum(s), Purchase, and/or Service Agreement(s). Additional services provided to Customer by NP will be governed by the specific Service Agreement or by an equivalent statement of work.

13) **Equipment.** Certain Services provided by NP include equipment provided by NP, as enumerated in the relevant Addendum(s) and/or Service Agreement(s). Such equipment will be owned, warranted, and maintained by NP. Customer is responsible for proper care and use of such equipment, including, but not limited to, proper power, cooling, protection from foreign contaminants, and normal operation. NP owned equipment that fails due to Customer neglect or misuse may not be subject to warranty and Customer will be responsible for repair or replacement.

- a) Customer may elect, but shall not be required to, purchase from NP certain devices (“Purchased Devices”) for Customer’s use in conjunction with the Services. Purchased devices shall be listed on a Purchase Agreement. Ownership of, and title to, the purchased devices shall transfer from NP to Customer at the time of delivery. Customer will own and bear all risks of loss, theft, or damage after delivery.
- b) For Purchased Devices that fail to operate in a manner to support the associated NP Service, NP will make reasonable attempts to provide technical assistance to Customer in configuring Purchased Devices to work with the Service. Expedited delivery services (*e.g.*, Next Business Day Delivery) when available can be provided to a Customer’s location for an additional charge when equipment is in stock either at NP or the equipment manufacturer. Non-expedited shipping charges will be the responsibility of NP for NP-owned equipment that is determined to be non-operational due to equipment failure. If it is determined the cause of failure is related to Customer damage outside of normal wear and tear, Customer will be responsible for all shipping and delivery charges.
- c) Customer may elect to use its own equipment instead of purchasing equipment directly from NP. NP shall not be responsible in any way for the compatibility or fitness for use of any Customer-supplied equipment.
- d) Customer acknowledges that the performance of equipment, including the Purchased Devices and equipment supplied by Customer, can be affected, and thus the corresponding Service provided by NP can be directly impacted, by environmental conditions, which are outside the control of NP. It is the responsibility of Customer to ensure that such equipment is receiving proper care, such as proper cooling, a clean power supply, being housed in proper facilities, etc. In addition, NP will in no way be responsible to Customer for any damage caused by these factors to the Purchased Devices, Customer’s supplied equipment, or any degradation in Service levels resulting therefrom.

14) ***Warranties, Disclaimer and Remedies.***

- a.) **NP MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR THAT PRODUCTS PROVIDED UNDER THIS AGREEMENT SHALL BE FIT FOR ANY PARTICULAR PURPOSE.**
- b.) **NP DOES NOT WARRANT IN ANY WAY PRODUCTS NOT MANUFACTURED BY NP, AND THOSE WILL BE SOLD OR PROVIDED ONLY WITH THE WARRANTIES THAT ARE GIVEN BY THEIR MANUFACTURER. EFFECTIVE WITH CUSTOMER’S FULL PAYMENT TO NP FOR ANY PARTICULAR PRODUCTS, NP ASSIGNS TO CUSTOMER ANY WARRANTY GRANTED TO NP BY THE MANUFACTURER. NP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR THAT THE PRODUCTS SHALL BE FIT FOR ANY PARTICULAR PURPOSE. NP MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY,**

CONDITION, QUALITY, PERFORMANCE, OR NON-INFRINGEMENT OF THE DEVICES.

c.) NP DOES NOT WARRANT THE ACCURACY OF DATA TRANSMITTED BY ELECTRONIC PROCESS AND NP WILL NOT BE RESPONSIBLE FOR ACCIDENTAL OR INTENTIONAL INTERCEPTION OF DATA BY OTHERS.

d.) NP'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY IN ANY CAUSE OF ACTION WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSES THEREOF, EVEN IF CAUSED BY: (1) NEGLIGENCE, INCLUDING THAT OF NP, WHETHER SOLE OR CONCURRENT OR ACTIVE OR PASSIVE; (2) BREACH OF CONTRACT; OR (3) ANY OTHER THEORY OF LEGAL FAULT, INCLUDING STRICT LIABILITY, IS EXPRESSLY LIMITED TO:

1. CUSTOMER'S RIGHT TO TERMINATE THIS AGREEMENT FOR CAUSE OR,

2. CUSTOMER'S RIGHT TO ORDER CONTRACTOR TO RE-PERFORM THE WORK REGARDING WHICH A MATERIAL BREACH OCCURRED, AT NO COST TO CUSTOMER.

e.) NP SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. ANY NP LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED A SUM EQUIVALENT TO THE AMOUNTS PAYABLE BY CUSTOMER TO NP FOR THE SERVICES FOR THE SIX (6) MONTH PERIOD PRIOR TO ANY CLAIM. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

15) Indemnification and Hold Harmless. Customer assumes all liability for and agrees to indemnify, release, defend, and hold harmless NP, and its officers, directors, affiliates, employees, agents, and contractors from and against any and all loss, claim, liability, damage, cost, or expense (including, without limitation, court costs, and attorneys' fees) without regard to cause or causes arising in connection with this Agreement and with the provision or use of the Service(s) by Customer, or its affiliates, employees, agents and contractors, invitees or performance by those entities under this Agreement, including but in no way limited to, a breach by Customer of its representations and warranties.

a) NP assumes all liability for and agrees to indemnify, release, defend and hold harmless Customer from and against any and all loss, claim, liability, damage, cost, or expense (including, without limitation, court costs and attorneys' fees) arising in connection with the provision of the Service(s) or its performance under this Agreement, including, but in no way limited to, a breach by NP of its representations and warranties, but only to the extent that those losses, claims, liabilities, damages, costs, or expenses arise out of the willful misconduct of NP, its employees, agents or other representatives.

b) The party seeking indemnification ("Indemnified Party") shall promptly notify the other party ("Indemnifying Party") in writing of any allegation or third-party legal proceeding for which indemnification is sought and shall cooperate with the Indemnifying Party to resolve the matter. The Indemnified Party shall tender sole control of the defense of the allegations or legal proceeding to the Indemnifying Party, subject to the following: (i) the Indemnified Party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the Indemnified Party to admit liability, pay money, or take (or refrain from taking) any action, will require the Indemnified Party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

- 16) **Term.** This Master Service Agreement shall become effective upon execution by Customer and acceptance by NP. This Master Service Agreement shall remain in effect until the last of any services received by Customer from NP is terminated. The initial term for each Service provided to Customer shall be enumerated in the Addendum(s) and/or Service Agreement(s) herein presented. Following the expiration of the initial term, this Agreement shall be automatically renewed from year to year subject to the right of either party to terminate this Agreement. Termination clauses are specific to the Addendum(s) and/or Service Agreement(s) severally attached to this Master Service Agreement. As such, the details of the Term and Termination for each will be addressed in the relevant Addendum(s) and/or Service Agreement(s).
- 17) **Termination Liability.** If either party terminates all or any portion of this Agreement, in addition to owing any and all fees, costs and expenses incurred up and through the effective date of termination, Customer shall be responsible for the remaining balance of all amounts owed for the remaining Term of the terminated portion of the Agreement, as measured from the effective date of termination, including but not limited to payments for terminated Services associated with the terminated portions of this Agreement, as well as all other costs, fees, that may be owing under any Services Agreement or Purchase Agreement.
- 18) **Service Suspension / Maintenance.** NP may from time-to-time suspend a Service for routine maintenance. NP shall provide Customer advance notice of the Service suspension. Such Service suspensions are not considered an out-of-service condition for the purpose of calculating any out of service credits or for any other reason, provided that the Service is restored by the end of the period specified in the notification.
- 19) **Intellectual Property / Proprietary Information.** Customer acknowledges that this Agreement is not intended to transfer ownership of any intellectual property, including but in no way limited to, patents, inventions, trade secrets, trademarks, service marks, trade names, logos, designations, copyrights, and other proprietary rights, and Customer agrees that it will not at any time during or after the term of this Agreement, assert or claim any interest in or do anything that may adversely affect the validity of any trademark, service mark, trade name, logo, designation or copyright belonging to or licensed to the NP (including, without limitation, any act or failure to act which may infringe or lead to the infringement of any of the proprietary rights).
- 20) **Confidentiality.** Customer understands and agrees that the terms and conditions of this Agreement and communications between the parties regarding this Agreement or the Services provided hereunder (including any price quotes or related proposals), as well as such information relevant to any other agreement between Customer and NP are confidential and shall not be used by Customer for any purpose other than in connection with the performance of this Agreement. Neither party shall disclose Confidential Information (as defined below), except to its officers, directors, affiliates, employees, agents, or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient of any Confidential Information will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially-reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines in good faith that complying with (i) and (ii) could: (a) result in a violation of legal process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third-party requests concerning its use of the Services. For purposes of this agreement, "Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Customer agrees that a breach or imminent breach of this section shall constitute a material breach of this Agreement for which NP will have no adequate remedy at law. Customer agrees, therefore, that NP's remedies upon a breach or imminent breach of this section include, but are not limited to, the right to preliminary and permanent injunctive relief restraining Customer from any further violation of said Section, as well as an equitable accounting of all profits or benefits arising out of such breach, in addition to any other remedies available at law or in equity or otherwise to NP.

- 21) **Force Majeure.** If NP's performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes including failure or malfunction of Customer-supplied equipment, acts of God, explosions, vandalism, cable cuts, storms, fires, floods, or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages, or other labor difficulties, or any law, order, regulation, or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then NP shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. NP shall use commercially-reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch. If such occurrence occurs for a period of at least sixty (60) days, then Customer shall have the option to terminate the affected portion of this Agreement, without liability.
- 22) **Notices.** All notices required or permitted to be given hereunder shall be in writing, (including electronic mail sent to the addresses set forth on Page 1 of this Master Agreement) and deemed given (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guaranteeing next day delivery, (c) three (3) days after deposited in the United States mail, postage prepaid, sent certified mail or registered, or (d) the date upon which the read-receipt was received for electronic mail. All notices shall be addressed to the parties at the addresses specified above or to such other address as hereafter designated in writing by the applicable party in the manner provided in this Section for the giving of notices.
- 23) **Dispute Resolution / Venue and Choice of Law.** Except for attempts by NP to collect amounts owed under this Agreement, which may be pursued, among other ways, through the federal and state judicial systems, any dispute arising out of or relating to this agreement or the breach thereof, shall be resolved through reasonable, good-faith negotiations between NP and Customer. Should such negotiations fail to successfully resolve the dispute, both parties agree to non-binding mediation before a mutually acceptable, neutral, third-party mediator. Mediation processes shall be confidential and based on terms acceptable to the mediator and/or the mediation service provider. The mediation shall take place in Marysville, Kansas. Notwithstanding the preceding sentence, NP shall be entitled to injunctive relief issued by a court of competent jurisdiction for an actual or threatened breach of Customer's obligations.
- a) All disputes arising out of this Agreement and or any related Service Agreement or Purchase Agreement shall be governed by Kansas law, without reference to that state's conflict of law rules. Venue for disputes that may be brought to the courts shall be exclusively in the Marshall County District Court sitting in Marshall County, Kansas and in the United States District Court for the District of Kansas, and the parties hereby consent to personal jurisdiction of those courts.
- b) **CUSTOMER AND NP EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
- 24) **Miscellaneous Provisions.**
- a) **Attorney Fees.** If a proceeding is brought for the enforcement of this Agreement for the purposes of collection or enforcement of this MSA, Service and/or Purchase Agreements, NP shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.
- b) **Past Due Accounts.** In the event Customer is past due on amounts owed to NP, Customer shall not be entitled to any applicable out-of-service credit. In addition, NP may, at its sole option, refuse to provide additional Service or allow Customer to place additional orders; place Customer's account on hold and refuse to provide support for the Services, including the issuance of new trouble tickets. Customer shall receive email notification that its account will be placed on hold unless Customer pays the past-due amounts, including any applicable fees. NP shall not be responsible in any way for expenses incurred by Customer or damages to Customer as a result of NP placing Customer's account on hold.
- c) **Third-Party Technical Support.** NP shall not be responsible for any charges incurred by Customer for Customer's engagement of a third party to perform technical support, whether related or unrelated to the Services and/or devices (except where specifically noted in an applicable service plan).
- d) **Subcontractors.** NP may subcontract part or all of the Services to one or more third parties provided, however that NP shall be responsible for, and shall guarantee, all work performed by any NP-designated subcontractor as if NP performed such work itself. Notwithstanding the foregoing, NP shall not delegate or

subcontract any Services that are expressly designated as being non-delegable by Customer on a statement of work.

- e) Assignability. The Customer may not assign or otherwise transfer (including without limitation, a transfer due to a change of control), the obligations or benefits under this Agreement except with the consent of NP.
- f) Relationship of the Parties. Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, agency, franchise, sales representative or employment relationship between the parties.
- g) Severability. If any provision of this Agreement is held to be unenforceable, the Parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision and remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.
- h) Waiver, Remedies, Non-Exclusive. No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate a waiver thereof; nor will any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy provided herein or at law or in equity. Except as expressly provided herein, no remedy specified in this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity.
- i) No Third-Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.
- j) Amendments/Counterparts. This Agreement may only be amended by a writing signed by both of the Parties. This Agreement may be executed in multiple counterparts. Facsimiles of a Party's authorized representative's signature shall be deemed to be binding upon such Party, unless otherwise prohibited by

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date this Agreement is signed by Customer and accepted by NP as set forth below.

[Insert Customer Name]

Accepted by NP

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____